

Tony H. Ashtiani
P.O.Box 12723
Tamuning Guam 96931
671-688-4844
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UNITED STATES DISTRICT COURT

DISTRICT OF GUAM

Tony H. Ashtiani,)
)
Plaintiff,) Civil Case No.: 02-00032
)
Vs.)
) INTENTIONAL DELAY OF SERVICE.
Continental Micronesia Inc,)
) Fed R. Civ. P. RULE 5
Dba, Continental Micronesia,)
)
Continental Airlines,)
)
Defendant)
)

This matter before the Court in reference to delayed service by defendant due to being closed on November 28, 2003 (day after thanksgiving) which has no bearing in reference to timely service.

This service also is not applicable in computation of time as ("legal holiday") November 27, 2003 did not fall between 14 days prior to hearing, which is between November 28, 2003. and December 12, 2003.

1 I have attached my correspondence to defendant regarding
2 this matter. Defendants' letter dated November 26, 2003 which
3 was served on plaintiff the same day herewith attached to
4 plaintiff's response. EXHIBIT A.

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6 This matter made plaintiff to make several trips to
7 District Court to make copies, as I wanted to work on reply to
8 defendants' opposition (partial summary judgment) over the
9 weekend on November 29TH and 30TH, 2003 due to the fact, I have
10 limited resources and that every hour and every minute of
11 research counts.
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14 This issue both burdened the Court staff and frustrated the
15 plaintiff, while my priority is to obey the Local Rules and file
16 7 days prior to hearing and meet the dead lines, defendants
17 priority is to aggravate plaintiff. This is not the first time
18 that defendant has directed me to District Court to make copies
19 of their pleadings. This is absolute none sense.
20

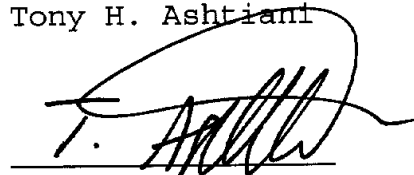
21 Further more, On December 05, 2003 defendant served
22 plaintiff with an **ORDER** dated November 26, 2003 (nine days
23 later). EXHIBIT B. if, in fact **ORDER** required immediate obeying
24 or compliance, there would have been a default on my part with
25 serious consequences.

1
2 Lastly and most important to me, if my request of making
3 copies has inconvenienced any of the Court staff I am remorseful
4 and apologize, at times it is my only limited procedural
5 mechanism left to be served timely.
6

7
8 Submitted respectfully,

9 Dated: this 8TH day of December 2003.
10
11

12 Tony H. Ashtiani

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14 

15 Plaintiff, pro se
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Tony. H. Ashtiani
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Via: Hand Delivery

December 7, 2003.

CARLSMITH BALL LLP

Ms. Elyze McDonald
Bank of Hawaii Bldg., Suite 401
134 West Soledad Avenue
Hagatna, Guam 96932-5027

Re: Service Fed Rule Civ P. (Rule 5)

Tony H. Ashtiani vs. Continental Micronesia Inc,

In District Court of Guam CV. 02-00032

RECEIVED
CARLSMITH BALL
Date: 12/08/03
Time: 10:19 By: EM

Dear Attorney Ms. Elyze McDonald.

I am writing this letter to you in correspondence to your letter dated November 26, 2003. I had every intention to respond to you earlier and that my ability was hampered due to other priorities and now I have the opportunity to state the facts.

On November 26, 2003, you stated that your office would be closed on Friday November 28, 2003, which was a due date on our opposition to summary judgment and that you asked me to exchange service on December 1, 2003. I volunteered to meet one of your staff on November 28, 2003 at 2:30 and exchange service at the clerk's office, you were none responsive. It was further emphasized that those documents are important to me because I will be doing research on Saturday and Sunday in order to reply to CMI's opposition for summary judgment, you had omitted all that from your letter. **EXHIBIT A.**

Furthermore, during the review of your letter, I even asked Ms. Marisa (Office administrator at Carl smith) that she can call me and we can meet at District Court to exchange service, she said "will call me after she speaks with you" that did not happen either.

Page 2 of 2
Ashtiani to Ms. McDonald
December 07, 2003.

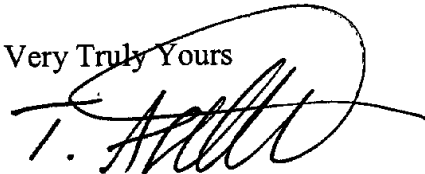
Accordingly, you omitting part of our agreement in your letter and Ms Marisa not calling me back, resulted in going back and forth to District Court, On November 28, 2003, and several times on December 01, 2003.

In order to absense any doubt that your intention was to deprive me timely service and that you violated my procedural due process as *pro se* litigant, another office administrator of Carlsmith Mrs. June Cruz on December 05, 2003, served me with an **ORDER** dated November 26, 2003 (nine days after service) **EXHIBIT B**.

If in fact **ORDER** required compliance in conjunction with a statute of limitation, there would have been a default with serious consequences.

All I know, to assure your law firm and Continental Airlines legal team adequate time to respond, I have served you within the same day and I wish that you would do the same for me.

Very Truly Yours

A handwritten signature in black ink, appearing to read 'T. Ashtiani', with a large, sweeping flourish extending from the end of the signature.

Tony H. Ashtiani

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

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DIRECT DIAL NO.

EMCDONALD@CARLSMITH.COM

November 26, 2003

Mr. Tony H. Ashtiani
P.O. Box 12723
Tamuning, Guam 96931

Re: Tony Ashtiani v. Continental Airlines
Civil Case No. CV02-0032

Dear Mr. Ashtiani:

This is to confirm our telephone conversation of today at 11:00 a.m., Guam time. Continental will file its Opposition to your Motion for Summary Judgment on Friday, November 28, 2003. Pursuant to our agreement over the phone, we will serve you with this document on Monday, December 1, 2003, due to the fact that our office will be closed on Friday, the day after Thanksgiving. In turn, you will also serve us with your Opposition on Monday, December 1, 2003.

Sincerely,

Elyze J. McDonald
for Elyze J. McDonald

EJM/mlg
4813-2752-9728.1.013280-00079

HONOLULU • KAPOLEI • HILO • KONA • MAUI • GUAM • SAIPAN • LOS ANGELES • WASHINGTON, D.C.

COPY

CARLSMITH BALL LLP
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Attorneys for Defendant
Continental Micronesia, Inc. dba
Continental Micronesia and
Continental Airlines, Inc.

T. Ashtiani
TONY ASHTIANI
DEC. 5, 2003

FILED
DISTRICT COURT OF GUAM

NOV 26 2003

MARY L. M. MORAN
CLERK OF COURT

B

IN THE DISTRICT COURT OF GUAM

TONY H. ASHTIANI,

Plaintiff,

vs.

CONTINENTAL MICRONESIA, INC. dba
CONTINENTAL MICRONESIA and
CONTINENTAL AIRLINES, INC.,

Defendant.

CIVIL CASE NO. CV02-00032

**ORDER GRANTING DEFENDANTS
REQUEST TO APPEAR
TELEPHONICALLY FOR HEARING
ON DEFENDANTS MOTION FOR
SUMMARY JUDGMENT**

ORDER

IT IS HEREBY ORDERED that Defense Counsel may appear telephonically for the hearing on their Motion for Summary Judgment scheduled for December 12, 2003, at 10:30 a. m.

SO ORDERED this 26th day of November 2003.

/s/ John S. Unpingco

THE HONORABLE JOHN S. UNPINGCO
Chief Judge, District Court of Guam